

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
v.) No. 3:06-0175
) JUDGE ECHOLS
SUSAN ANN SPERL, et al.,)
)
 Defendants.)

ORDER

Pending before the Court are Defendant Randall E. Thompson's *pro se* Motion to Dismiss Civil Case (Docket Entry No. 52), to which the Plaintiff United States filed a response (Docket Entry No. 55), as well as the Report and Recommendation ("R&R") entered by the United States Magistrate Judge on June 22, 2007 (Docket Entry No. 59), to which Defendant Thompson filed objections (Docket Entry No. 64), and the United States filed a response (Docket Entry No. 65).

The Government seeks to enjoin permanently Defendant Thompson and his mother, Susan Ann Sperl, from working as federal income tax preparers. Defendant Thompson moved to dismiss the action claiming that his employment as a tax preparer at Susan Tax ended on October 31, 2005, this action was not filed until four months later, and he has returned to his former employment as an electrician. Thus, Defendant claims the Government cannot obtain an injunction against him and the action should be dismissed. The Magistrate Judge treated the Motion to Dismiss as one for summary

judgment due to Defendant Thompson's presentation of facts outside the pleadings.

When a party makes timely objections to a Report and Recommendation, the Court "shall make a *de novo* determination of the matter and may conduct a new hearing, take additional evidence, recall witnesses, recommit the matter to the Magistrate Judge for further proceedings and consideration, conduct conferences with counsel for the affected parties, and receive additional arguments, either oral or written, as the District Judge may desire." L.R.M.P. 9(b)(3).

The Court has conducted a *de novo* review of the record and finds no error of fact or law in the R&R. The Magistrate Judge properly converted the Motion to Dismiss to one for summary judgment because Defendant Thompson presented facts that were not included within his original Answer, although such facts were not presented under oath. Defendant Thompson made factual assertions without producing any evidence to corroborate his assertions. An agent's declaration and tax customer statements presented by the Government established that Defendant Thompson was personally involved in preparing and filing customers' federal tax returns. The Magistrate Judge correctly held that genuine issues of material fact exist and that the Government is entitled to obtain discovery, which to this point Defendant Thompson has failed to produce. The Court cannot resolve on the present factual record whether the

Government is entitled to a permanent injunction against Defendant Thompson under the tax statutes. Accordingly,


(1) Defendant Thompson's Written Objections to the Report and Recommendation (Docket Entry No. 64) are hereby OVERRULED.

(2) The R&R of the Magistrate Judge (Docket Entry No. 59) is hereby ACCEPTED.

(3) Defendant Thompson's Motion to Dismiss Civil Case (Docket Entry No. 52) is hereby DENIED.

(4) This case is hereby returned to the Magistrate Judge for further case management in accordance with the Local Rules.

IT IS SO ORDERED.


ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE